



Comptroller General
of the United States

Washington, D.C. 20548

153777

Decision

Matter of: Earl F. Jones, Jr.

File: B-255045

Date: February 6, 1995

DIGEST

A transferred Navy employee's commanding officer initially authorized him two 30-day extensions of his initial 60-day temporary quarters period on the basis that he could not find existing housing to accommodate his wife's disability and was required to contract for a new house with a scheduled settlement date beyond the initial 60-day period. The agency's Personnel Support Activity disallowed payment of the employee's voucher for the extended period because the employee's wife's condition arose before the transfer and did not qualify as a circumstance occurring during the initial temporary quarters period, as required by 41 C.F.R. § 302-5.2(a)(2) (1994). However, since the General Accounting Office has held that under this regulation an extension may be given for a housing shortage that prevents an employee from locating an adequate residence during the initial period of temporary quarters, the matter is remanded to the agency to determine whether the employee should be granted the extensions.

DECISION

Mr. Earl F. Jones, Jr., is appealing our Claims Group's settlement Z-2868552, June 8, 1993. The settlement sustained the disallowance of his voucher claim for an additional 60 days of subsistence expenses while occupying temporary quarters incident to a permanent change of station in July 1992. We conclude that the case should be remanded to the agency for further consideration.

Mr. Jones, an employee of the Department of the Navy stationed in Keyport, Washington, was transferred to Charleston, South Carolina. He was authorized an initial 60 days subsistence expenses while occupying temporary quarters. His temporary quarters period began on July 6, 1992, the date he reported for duty in Charleston.

According to Mr. Jones, he began a search for permanent housing even before he reported for duty. Because his wife had a painful foot condition that arose during the year preceding the transfer, his search was limited to one-story housing. Mr. Jones states that he was in Charleston for a conference about 1 month before his transfer. He retained a realtor and inspected a dozen or so houses suggested by the realtor, but found nothing in his price range that was suitable for his wife's medical condition. He returned to Charleston on the weekend of July 4, 1992, and looked at other houses found by the

realtor. After he reported for duty on July 6, he continued to search for housing. During the second week, Mrs. Jones flew to Charleston and spent a few days looking for housing.

Based on those efforts, Mr. Jones concluded that no suitable housing in his price range was available. At that point, he found a builder who could deliver a new house to their specifications within the maximum 120-day temporary quarters period. Before he signed a contract to build, Mr. Jones informed his command at the Charleston Naval Weapons Station of his wife's disability, his problem in finding suitable housing, and the prospect of being able to build a home within 120 days. He requested an extension of his initial allowance to cover an additional period of temporary quarters occupancy. Based on those circumstances, his commanding officer approved the request. Mr. Jones and his wife signed a contract for the construction of a house on July 19, 1992, with settlement to occur on or before November 1, 1992. The house was completed on schedule and they moved in before the expiration of the second 60-day period.

Mr. Jones's claim voucher was submitted by his employing activity to the Navy Personnel Support Activity (PSA). The disbursing officer at PSA allowed the claim for the initial 60-day period, but denied the claim for the additional period of temporary quarters. The disbursing officer denied the extension because the contract of purchase indicated a settlement/occupancy date that was after the initial 60-day temporary quarters period.

Mr. Jones appealed the disbursing officer's denial to the Defense Finance and Accounting Service (DFAS), which also denied the claim. DFAS found that his wife had a pre-existing medical condition that directly affected his housing choices and that his contract to build a home stipulated a completion date a full 52 days after the initial temporary quarters period would expire. DFAS concluded, therefore, that the need to extend temporary quarters did not arise during the initial period and did not qualify as a circumstance that would permit an extension of the temporary quarters period, as required by 2 JTR para. C13004-1b. In support of this position, DFAS cited our decision in William M. Stoddard, B-248012, Aug. 25, 1992.

Section 5724a(a)(3) (1988) of title 5, United States Code, authorizes payment to transferred employees of subsistence expenses for a period of 60 days while occupying temporary quarters when the new official station is located within the United States or other specified locations. The statute provides that the period may be extended for an additional 60 days "if the head of the agency concerned or his designee determines that there are compelling reasons for the continued occupancy of temporary quarters." The implementing regulations are found in Part 302-5 of the Federal Travel Regulations (FTR).

The specific regulation governing extensions of temporary quarters beyond an initial 60-

day period is FTR section 302-5.2(a)(2),¹ which allows an additional period not to exceed 60 consecutive days provided the head of the agency or his/her designee determines that there are compelling reasons for the continued occupancy of temporary quarters. The regulation further provides as follows:

" . . . Extensions of the temporary quarters period may be authorized only in situations where there is a demonstrated need for additional time due to circumstances that have occurred during the initial 60-day period of occupancy that are determined to be beyond the employee's control and acceptable to the agency."

The examples used in this section to describe compelling reasons beyond the employee's control include but are not limited to ". . . (iii) Inability to locate permanent residence which is adequate for family needs because of housing conditions at the new official station." (Emphasis added.)² Section 302-5.1 of the FTR³ provides that administrative determinations as to the necessity for temporary quarters occupancy and the length of time of that occupancy are to be made on an individual-case basis.

DFAS and the disbursing officer in the present case may have construed the governing regulations and our decisions too narrowly. The focus of FTR section 302-5.2(a) (2), supra, in referring to "circumstances which have occurred during the initial 60-day period," relates to actual situations arising in connection with the transferred employee's ability to find and occupy appropriate permanent housing at his new duty station. The regulation permits consideration of adverse housing conditions, though those conditions started before the employee's transfer began. Connie Tharp Holmquist, B-255603, Feb. 10, 1994.

Our decision in William M. Stoddard, B-248012, Aug. 25, 1992, cited by DFAS, is distinguishable. There, the employee experienced difficulties in closing on schedule because of problems in obtaining a mortgage and required appraisals, and he did not apply for an extension until after his initial 60 days had expired.

Here, the threshold issue is whether Mr. Jones's failure to find existing housing at the new official station adequate to meet his family needs resulted from adverse housing conditions at his new official station. The record shows that Mr. Jones's wife needed to live in a one-story home because of his wife's disability. We agree with the commanding

¹41 C.F.R. § 302-5.2(a)(2) (1993). The derivative administrative provisions for civilian employees of the Department of the Navy are found in 2 JTR, para. C13004-1b.

²41 C.F.R. § 302-5.2(a)(2)(iii) (1993).

³41 C.F.R. § 302-5.1 (1993).

officer that it was appropriate for Mr. Jones to limit his search for one-story homes in light of this family need.

The record does not make clear, however, whether Mr. Jones's failure to find an existing one-story house was due to a shortage of such housing or to his own personal dissatisfaction with the available choices. The commanding officer's statement merely cites Mr. Jones's difficulty in obtaining suitable housing, "particularly considering the real estate conditions one faces when moving from a west coast area where homes are valued higher into the southeast." Mr. Jones refers to his failure to find existing suitable housing "in his price range." If, in fact, Mr. Jones's decision to build a home was based on personal choice and not caused by a lack of adequate one-story homes in the area, he would not be entitled to any extensions of his initial period of temporary quarters under the regulation.

As stated above, under FTR section 302-5.2(a)(2), Mr. Jones's agency is authorized to grant an extension to him if he is able to satisfy his agency that he made a reasonable effort to locate an existing one-story house but was unable to find one that was adequate for his family's needs. We will not overturn such an agency determination unless it is arbitrary, capricious, or contrary to law. Mark A. Wohlander, B-238300, Oct. 4, 1990, and decisions cited therein.

Accordingly, Mr. Jones's claim is remanded to the disbursing officer for further consideration in light of the criteria set forth above.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel